IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) RONALD DUNTON, individually   )
and on behalf of MICHAEL EIGHINGER,   )
JEREMY SORRELL, and SHANE SORRELL,)
)
)
        Plaintiffs,   )
)
v.   )   Case No. 08-CV-645-GKF-SAJ
)
(2) PACCAR, INC., d/b/a PETERBILT   )
MOTORS COMPANY; (3) CUMMINS, INC.,)
d/b/a CUMMINS ENGINE COMPANY, INC.,)
and (4) OKLAHOMA TURNPIKE   )
AUTHORITY,   )
)
        Defendants.   )

OPINION AND ORDER

This matter comes before the Court on the Motion to Dismiss [Dkt. # 24] filed by

defendant Oklahoma Turnpike Authority ("OTA"). Defendant OTA filed its Motion to Dismiss

on December 9, 2008. A response was due by December 29, 2008, but plaintiff Ronald Dunton

("Dunton") has filed no response. For the following reasons, the Motion to Dismiss is granted.

The following summarizes the facts alleged in Dunton's Petition. [Dkt. # 2-3]. Dunton

and his deceased wife Shelley Sorrell were working as team drivers for Central Trucking, Inc.

Dunton was driving his truck on Interstate 44/Turner Turnpike while his wife slept in the sleeper

berth. Dunton heard her scream and turned and saw that the sleeper berth was on fire. Dunton

veered into the guard rail on the right side of the road, went through the guardrail, and ultimately

ended up off of the road. Shelley Sorrell was killed as a direct result of the fire and the accident

caused by the fire.

Dunton's Petition consists of 1) a claim for relief against defendants PACCAR, Inc., d/b/a Peterbilt Motors Company ("PACCAR") and Cummins, Inc., d/b/a Cummins Engine Company, Inc. ("Cummins") for strict liability for the wrongful death of his wife; 2) a claim for relief against PACCAR and Cummins for strict liability for injuries to himself; 3) a claim for relief against PACCAR and the OTA for negligence resulting in the death of his wife; and 4) a claim for relief against all defendants for negligence resulting in personal injuries to himself.

More specifically, Dunton's claims against the OTA are limited to negligence in "designing, constructing, and/or maintaining guardrails that failed to properly restrain reasonably anticipated motoring traffic on the roadway when struck and needed." [Dkt. # 2-3, page 8].

Dunton has asserted that the OTA is an Oklahoma corporation. [Petition at Dkt. # 2-3, page 2]. Indeed, the OTA is a body corporate and politic and instrumentality of the State of Oklahoma. Okla. Stat. tit. 69, § 1703(A). The OTA is an Oklahoma governmental agency. *See Henry v. Okla. Tpk. Auth.*, 1970 OK 232, ¶22, 478 P.2d 898, 901-02. According to the Oklahoma Supreme Court, "highways, such as turnpikes, are the property of the State and in the building of such the State is acting in its governmental capacity, rather than business capacity." *Id.* at 902 (citations omitted). Dunton's negligence claim against the OTA is therefore governed by Oklahoma's Governmental Tort Claims Act ("GTCA"). Okla. Stat. tit. 51, §§ 151 *et seq.*

The GTCA bars Dunton's claims against the OTA for at least two reasons. According to the GTCA, the OTA shall not be liable "if a loss or claim results from:
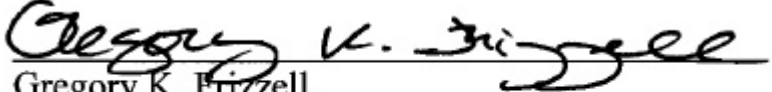
> . . .
> (14) Any loss to any person covered by any workers' compensation act or employer's liability act;"

Okla. Stat. tit. 51, § 155(14).

According to a letter submitted as exhibit five to defendant PACCAR, Inc.'s Notice of Removal [Dkt. # 2-6], Dunton claimed and received, under Missouri law, workers' compensation medical payments for himself and indemnity payments on behalf of his deceased wife. Thus, Dunton's claim against the OTA is barred under Okla. Stat. tit. 51, §155(14). *See Childs v. State ex rel. Okla. State Univ.*, 1993 OK 18, 848 P.2d 571, 576 (§ 155(14) "clearly demonstrates an intent to extend the State's Subdiv. 14 immunity to embrace *claims by all nongovernmental employees covered for the injurious event by the workers' compensation regime of any state*.").

WHEREFORE, defendant OTA's Motion to Dismiss [Dkt. # 24] is granted.

IT IS SO ORDERED this 31st day of December, 2008.

Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma